

Clerk File No. 209 103

Clerk File sponsored by: _____

**Department of Executive Administration
Rule No. 5-031, implementing Seattle
Business Tax Ordinance relating to measure
of tax for retailers and wholesalers**

Date Introduced and Referred:	To: (committee):
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action:	Disposition: Filed

Date Filed with City Clerk

By

Date	Recommendation	Vote

[illegible]

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-031

Seattle Rule 5-031 **Measure of Tax – Retailers and Wholesalers**

- (1) **Measure of the Tax.** The measure of the tax is the gross proceeds of sale. Whether or not they have an office or place of business within the City, persons who are classified as retail or wholesale sellers shall include in the Seattle tax base gross proceeds from all sales generated or made possible in whole, or in part, by their Seattle business activities.
- (2) **Assignment of Gross proceeds of sales to Seattle.** This section instructs taxpayers to assign certain gross proceeds of sales to the City. Once the amount of gross proceeds of sales assigned to Seattle is determined then any applicable deductions contained in sections 3, 4, and 5 below may be deducted, to arrive at the amount subject to tax.

- (a) Office or place of business in Seattle. A person who has an office or place of business in Seattle, and not elsewhere, must include in the measure of the tax all gross proceeds from sales made possible in whole or in part by business activities rendered by, generated from, or attributable to the office or place of business located within the City. If a person has no office or place of business except in Seattle, all of the person's sales are presumed to have been made possible in whole or in part by business activities performed at the taxpayer's Seattle office or place of business.
- (b) No office or place of business in Seattle. A person engaging in business activities in the City who does not have an office or place of business in Seattle must include in the measure of the tax the gross proceeds of all sales attributable, in whole or in part, to business activities performed in the City.
- (c) Office or place of business both inside and outside of Seattle. A person who maintains an office or place of business in Seattle and also elsewhere:
- (i) shall be taxable on that portion of their gross proceeds of sales that is derived from business activity rendered by, generated from, or attributable to the office or place of business located within the City; and
 - (ii) shall allocate to the City and be taxable on the gross proceeds of sales from business activities performed in the City, but supported by the office or place of business located outside the City, where the business activity performed in the City is a significant factor in making or holding the market for the goods sold; and
 - (A) delivery and acceptance of the product occurs in Seattle; or
 - (B) the customer is located in Seattle.

Allocations under the subsection (c) shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution for those goods in interstate commerce.

Pursuant to RCW 35.102.130, sales generated by, or attributable to, an office or place of business located outside Seattle will be taxable if goods are delivered into the City of Seattle, and the seller has nexus with the City.

(3) **Deductions for Interstate or Intrastate Sales--Retailers and Wholesalers.**

- (a) Products delivered or received outside the State of Washington (interstate). There may be deducted from the measure of tax amounts derived from the sale of tangible personal property that is delivered to, and accepted by, the purchaser or its agent outside the

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State of Washington (interstate). The deduction is available even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of the seller. It is also available whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis. The shipment may be made by the seller's own transportation equipment or by a carrier for-hire. For purposes of this section, the signature of a for-hire carrier, freight consolidator, or freight forwarder does not constitute receipt and acceptance when receiving the products for shipment unless the carrier, consolidator, or forwarder is acting as the purchaser's agent and has express written authority from the purchaser concerning the right of inspection to accept or reject the products before shipment of the goods.

- (b) Products delivered or received outside of Seattle but inside the State of Washington (intrastate).
- (i) Prior to January 1, 2008, gross receipts from sales that are made possible in whole or in part by a person's Seattle business activities may not be deducted from the tax base if the products sold are received by the purchaser or its agent in the State of Washington. Gross receipts may not be deducted even though the purchaser or its agent intends to, and thereafter does, transport or send the product outside Washington for use or resale, or for use in conducting interstate or foreign commerce.
 - (ii) Beginning January 1, 2008, there may be deducted from the measure of tax amounts derived from the sale of tangible personal property that is delivered to, and accepted by, the purchaser or its agent outside Seattle, but inside the State of Washington (intrastate).
- (c) Substantiation Required. A person claiming the interstate or intrastate deductions must retain in its records documentary proof that the purchaser received the products outside the State of Washington (interstate), or outside Seattle (intrastate).
- (i) Delivery to or by for-hire carriers, freight consolidators, or freight forwarders. When products are delivered to or by a for-hire carrier, freight consolidator, or freight forwarder, acceptable proof will be:
 - (A) The contract or agreement of sale, if any, showing where acceptance will take place; and
 - (B) A waybill, bill of lading or other contract of carriage showing that the seller has delivered the goods to the for-hire carrier for transport to the purchaser or the purchaser's agent outside Washington (interstate), or outside Seattle (intrastate). The contract of carriage must show the seller as the consignor (or other designation used to indicate the person shipping the product) and the purchaser or its agent as the consignee (or other designation of the person to whom the product is being sent).
 - (ii) Delivery by Seller. When products are delivered using the seller's own transportation equipment, acceptable proof will be a trip-sheet signed by the individual delivering the product and showing all of the following:
 - (A) The seller's name and address;
 - (B) The purchaser's name and address;

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- (C) The place of delivery, if different from purchaser's address;
 - (D) The time of delivery to the purchaser; and
 - (E) The signature of the purchaser or its agent acknowledging receipt of the product at a location outside the State of Washington (interstate), or outside of Seattle (intrastate).
- (4) **Deduction for taxes paid to other cities that impose an eligible gross receipts tax.** A person who has engaged in business activities within and paid an eligible gross receipts tax to another jurisdiction within Washington on gross proceeds of sales in which the product is delivered to such other jurisdiction, may deduct from the measure of Seattle's tax those amounts included in the measure of the tax paid to the other jurisdiction. Amounts subject to this deduction should be reported and deducted on the tax return under the "tax paid to other B & O cities" line and not the intrastate line.
- (5) **Deduction to preserve constitutionality of tax.** SMC 5.45.100 (Q) provides that if inclusion of gross proceeds of sales in the measure of the tax would violate the Constitution of the State of Washington or the Constitution of the United States, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing. Persons claiming entitlement to such deduction under circumstances not otherwise addressed by SMC 5.45.075, SMC 5.45.080, SMC 5.45.081, or SMC 5.45.100, shall obtain permission from the Director before claiming the deduction.
- (6) **No Multiple Deductions for the Same Gross Proceeds of Sales.** An amount subject to more than one of the deductions contained in this rule or in SMC 5.45 may only be deducted once from the gross proceeds of sales.
- (7) **Tax Credits for Retailers and Wholesalers.** Multiple Activities Tax Credit. Persons classified as retailers or wholesalers may be eligible for a multiple activities tax credit to the extent that they have paid an eligible extracting, manufacturing, printing, or publishing gross receipts tax to another jurisdiction measured by the same gross receipts included in the Seattle tax base. Refer to SMC 5.45.070 to determine eligibility for the credit.
- (8) **Definitions.**
- (a) The term "agent" means a person authorized to inspect and either accept or reject the goods.
 - (b) The term "eligible gross receipts tax" is defined at SMC 5.30.030.
 - (c) The term "gross proceeds of sale" is defined at SMC 5.30.035.
 - (d) The terms "office" and "place of business" are defined at SMC 5.30.040.
 - (e) The term "product" is defined at SMC 5.30.040.
 - (f) The term "sale" is defined at SMC 5.30.060.
 - (g) The term "received" means that the purchaser, or an agent having the authority to reject or accept the product, has taken physical possession of the product, or has exercised

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dominion and control over the product inconsistent with the seller's continued dominion over it.

- (h) The terms "retail sale" and "sale at retail" are defined at SMC 5.30.060.
- (i) The terms "wholesale sale" and "sale at wholesale" are defined at SMC 5.30.060.

Effective: July 15, 2005
Amended: January, 2009

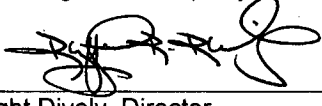
DIRECTOR'S CERTIFICATION

I, Dwight Dively, Finance Director of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Executive Administration.

DATED this 20TH day of January, 2009.

CITY OF SEATTLE,
a Washington municipality

By:


Dwight Dively, Director
Finance Department